NO. 80-6280

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

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SUPREME COURT, U.S.

CAROLYN HARRIS,

Appellant,

v.

STATE OF GEORGIA,

Appellee.

On Appeal to the Supreme Court of Georgia

BRIEF FOR THE APPELLEE IN OPPOSITION

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QUESTION PRESENTED

Does the Fourth Amendment prohibit a law enforcement officer from searching the home that is also occupied by a third party where an arrest warrant issued by a judge shows the address to be that of the person named in the arrest warrant, there is evidence the person named in the arrest warrant lives at that address, and the law enforcement officer in good faith believes the person named in the arrest warrant to be present at that address?

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STATEMENT OF THE CASE

A judge of the Municipal Court of Atlanta, Georgia, issued on March 30, 1979, an arrest warrant for Charles Davis, and the arrest warrant listed Davis' address as (1) 1717 Centra Villa, S.W., B-65, (2) 4465 Danforth Road, S.W., Atlanta, Georgia. (T. 66-67).

On April 3, 1979, at approximately 9:30 a.m. Deputy Sheriffs Paul Adams and J. L. Shockley went to 1717 Centra Villa Drive, S.W., Apt. B-65, Atlanta to serve an arrest warrant upon Charles Davis. (T. 5-6, 46-47, 55). The deputies knocked on the door for five or six minutes before the door was finally opened by Carolyn Harris. (T. 6-7, 47).

The deputies told Appellant that they had an arrest warrant for Davis and asked if he was there. (T. 7, 48). Petitioner replied that she knew Davis but that he was not there. (T. 7, 48). Because of the considerable delay in Appellant's answering

the door, Deputy Adams believed Davis was hiding inside the apartment. Appellant did not assert to the deputies that Davis did not live there. At her bench trial she failed to take the stand to rebut any of the officers' testimony. Although Appellant told officers she lived at that address, (T. 23) she presented no evidence to the officers or the trial court that Davis did not live there.

Although there were male and female garments in the clothes closet, the deputies could not find Davis in the one-bedroom apartment. (T. 8, 30). However, when Deputy Adams looked under the bed, he saw a spoon containing a white residue, a sifter containing white residue, and some scales. (T. 8, 49-50). Adams believed the substance to be an illegal drug, and later lab tests showed the substance to be cocaine. (T. 8-9, 51, 71).

After this substance was found, Appellant consented to further search of her apartment. (T. 9-10, 25, 27). However, during the search she withdrew her consent and officers obtained a search warrant. (T. 28-30). In addition to cocaine, officers also found diazepam (valium) and marijuana. (T. 71).

Appellant was indicted for three drug offenses and she had a bench trial on July 23, 1979, in the Superior Court of Fulton County, Georgia. (T. 1). The Court found her guilty and imposed concurrent sentences of five years probation and a $5,000 fine.

On direct appeal the Georgia Court of Appeals reversed the trial court, Harris v. State, 155 Ga. App. 278, 270 S.E.2d 854 (1980); but the Georgia Supreme Court reversed the Georgia Court of Appeals and reinstated the conviction. State v. Harris, 246 Ga. 759, 272 S.E.2d 719 (1980).

REASON FOR DENYING THE APPEAL

THE FOURTH AMENDMENT DOES NOT PROHIBIT A LAW ENFORCEMENT OFFICER FROM SEARCHING THE HOME THAT IS ALSO OCCUPIED BY A THIRD PARTY WHERE AN ARREST WARRANT ISSUED BY A JUDGE SHOWS THE ADDRESS TO BE THAT OF THE PERSON NAMED IN THE ARREST WARRANT, THERE IS EVIDENCE THE PERSON NAMED IN THE ARREST WARRANT LIVES AT THAT ADDRESS, AND THE LAW ENFORCEMENT OFFICER IN GOOD FAITH BELIEVES THE PERSON NAMED IN THE ARREST WARRANT TO BE PRESENT AT THAT ADDRESS.

The decisions of the appellate courts of Georgia were made prior to this Court's decision in Steagald v. United States, ___ U.S. ___, 29 Crim.L.Rptr. 3007 (1981). In that case this Court held that absent exigent circumstances police may not legally search for the subject of an arrest warrant in the home of a third party without a search warrant. Id. at 3008.

In Steagald, federal officers had a six month old arrest warrant on an individual named Ricky Lyons. Id. at 3008. An informant gave officers a telephone number in the Atlanta area where Steagald could be reached. Officers obtained the address through Southern Bell Telephone Company, and there was no evidence the arrest warrant listed the Atlanta address as Lyons' address. Id.

Also there is no evidence referred to by this Court in Steagald, other than the informant's tip about the phone number, that Lyons lived at the Atlanta address. The Government apparently conceded in the lower courts that the residence searched belonged only to Steagald. Id. at 3008-09.

However, Appellant's case is significantly different factually. The arrest warrant, issued by a judge, listed

Appellant's address as that of Charles Davis. When the officers came to the first address listed in the arrest warrant, Appellant admitted she knew Davis. Although she asserted that Davis was not there at that time, she has never asserted or testified that Davis did not also live there. Male and female clothing was in the apartment.

Therefore, other than the fact Davis was not at the address when deputies came to serve the arrest warrant, all of the evidence in Appellant's case is that Davis also lived at the residence of Appellant.

An arrest warrant is sufficient to authorize police to enter that person's residence to effect his arrest. Payton v. New York, 445 U.S. 573 (1980); see Steagald v. United States, supra at 3010, n. 7. Because Steagald had not yet been decided when the Georgia Supreme Court reached its decision, the Georgia courts have not made the factual finding as to whether Davis also lived at Appellant's residence. State v. Harris, 246 Ga. 759, 272 S.E.2d 719 (1980). However, the evidence in Appellant's case is that her residence was also the residence of Davis, so this case is controlled by Payton v. New York, supra.

CONCLUSION

For all the reasons stated, this appeal should be denied. If this Court takes any action other than denying the appeal, this Court should take no more action than simply remanding the case back to the Georgia Supreme Court for reconsideration in light of Steagald v. United States, supra.

Respectfully submitted,

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